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ALEXANDER L. STEVAS
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(3)

Case No. 84-702

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1984

STATE OF OHIO,
Petitioner,
vs.
CLAUDE CAPONI,
Respondent.

BRIEF IN OPPOSITION TO CERTIORARI

LAWRENCE W. VUILLEMIN
HOWARD E. MENTZER
2210 First National Tower
Akron, Ohio 44308
(216) 535-2151
Counsel for Respondent

43pp

QUESTION PRESENTED

Respondent submits that the Question Presented in Petitioner's Petition for a Writ of Certiorari is a non-issue in the present case because the opinions and the judgments delivered in the courts below have found that the search involved at no time constituted an inventory search.

The Question Presented herein should properly be: Where an alleged inventory search was merely a pretext for an evidentiary search, was evidence which was gathered at that time properly suppressed?

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STATEMENT OF THE CASE

Respondent would respectfully supplement the Statement of the Case rendered by Petitioner in several respects:

The indictment was returned against Respondent on August 23, 1982, with the capias directing the officers to arrest Respondent without unnecessary delay pursuant to the mandate of Rule 4(E)(1), Ohio Rules of Criminal Procedure. Although there is a special division within the sheriff's department whose duty and obligation it is to serve warrants handed down by the Summit County Grand Jury, the arrest warrant was not referred to the warrant division, but was held by the organized crime and vice unit of the sheriff's department, who even as of the date of the arrest, was still investigating the circumstances underlying the indictment against Respondent. It is important to note that the organized crime division of the sheriff's department is a broad investigative unit, who for admittedly investigatory reasons did not attempt to make the arrest until Friday August 27, 1982. No evidence was presented by the Petitioner to explain the failure of the vice squad to serve the warrant other than the statement that it was done for investigative reasons. On the day of the arrest, Deputy Padrutt arrived at Respondent's house in the adjoining County of Portage at 7:00 a.m. and conducted surveillance. Deputy Padrutt was in the area of Respondent's house from approximately 7:00 a.m. until 12:30 p.m., but at no time made an effort to serve the warrant on Respondent, although he freely admitted that he could have arrested the Respondent in the driveway of his own home, thereby eliminating the necessity of having to impound Respondent's motor vehicle.

After purposely failing to arrest Respondent when presented with a reasonable opportunity to do so, Deputy Padrutt attempted to follow Respondent for the purpose of conducting further surveillance and investigation. Respondent was next seen at a public restaurant where again the police failed to serve the arrest warrant even as Respondent was exiting the restaurant. The car was at the

time located in a restaurant parking lot open to the public. The police waited until Respondent got into his car and stopped Respondent within a short distance of the restaurant. Nobody present at the time of Respondent's arrest was a member of the sheriff's department warrant division.

Although the investigating detective labeled the arrest a traffic stop, there was no evidence that the Respondent had violated any traffic laws. After Respondent was stopped, he was handcuffed and removed from his car to a sheriff's vehicle, at which time a number of Summit County police officers commenced a systematic and thorough search of the interior of Respondent's automobile as well as the contents of a closed glove compartment and locked trunk. Respondent was never given an opportunity to make arrangements to have the car transported or property secured. One of the officers, Deputy Hamblin, was called to the scene pursuant to the direct orders of the vice squad, specifically Lieutenant Newman. Newman was in charge, and he directed and supervised not only the arrest of the Respondent but the "inventory" search as well.

That the investigating detectives intended to search Respondent's car and/or wait until he was in his car to make the arrest is best demonstrated by the fact that Deputy Hamblin, the inventory officer, was initially called at 2:45 p.m. and asked to stand by; yet, the Respondent was not arrested until almost an hour later at 3:40 p.m. The record reflects that the police searched Respondent's car in its entirety, removing the contents of closed envelopes, closed brief cases, address books, telephone books and sealed envelopes; the Respondent's wallet and its contents were also searched—not as a part of the booking process but in a search for evidence. Personal papers of Respondent were even subsequently delivered to the Federal Bureau of Investigation. In fact, the car itself was also seized as evidence by Lieutenant Newman and taken to the Summit County Sheriff's Department where a hold was placed on it. Deputy Hamblin admitted at the hearing that an inventory search was only "standard" when an automobile was to be towed to a private commercial lot. The trial court best

summarized what transpired as "not a bona fide inventory" but "an evidentiary search".

The record is rather vague as to what in fact the standards of the sheriff's department are regarding inventories, since the deputies were unable to tell the trial court whether or not there are written standards.

The Summit County Court of Common Pleas granted Respondent's Motion to Suppress the Evidence, specifically finding that the purpose of the police during the search was investigatory, a fact that was plainly borne out by the totality of the surrounding circumstances. This factual finding that the search was for evidentiary, not inventory, purposes was later affirmed by both the Ninth District Court of Appeals and the Ohio Supreme Court.

SUMMARY OF THE ARGUMENT

This Petition for a Writ of Certiorari should be denied because consideration by the United States Supreme Court of this case will not aid in determining the scope of an inventory search once police find evidence of a crime during their inventory. The present case is wholly unsuitable for the determination of this issue because the opinions and judgments of the courts below have made a factual finding that the search herein was **not** an inventory search; rather, it was merely a pretext for an evidentiary search.

Since it has been determined that the police herein conducted an evidentiary, or investigatory, search, as opposed to an inventory search, then Petitioner's argument as to the scope of an inventory search is inapplicable to the present case. As such, the Petition for a Writ of Certiorari should be denied.

ARGUMENT

The Question Presented in the Petition for a Writ of Certiorari is based upon the false presumption that this case involves a valid inventory search which was later expanded into an evidentiary search. However, the facts, as well as the opinions and judgments of the courts below simply do not support such a presumption. The search involved herein was at no time merely a routine inventory of an automobile which was lawfully impounded. To the contrary, the investigatory purpose so permeated this search from the outset that it was held to be entirely evidentiary in nature. This search was best summarized by the trial court which, after a thorough review of the totality of the surrounding circumstances, held that "[w]hat occurred on that occasion bears little resemblance to a bona fide inventory search. Its purpose was plainly to gather evidence and it was done without authority of law."

In **South Dakota v. Opperman**, 428 U.S. 364 (1976), this Court held that inventory searches are permissible **only** when not utilized as an evidentiary search. It is the non-investigative police inventory of automobiles to which warrant requirements are inapplicable. **Supra** at fn. 5. The Ohio Supreme Court has interpreted **South Dakota v. Opperman**, and has held:

> "...*a routine inventory search of a lawfully impounded automobile is not unreasonable within the meaning of the Fourth Amendment when performed pursuant to standard police practice,* ***and when the evidence does not demonstrate that the procedure involved is merely a pretext for an evidentiary search of the impounded automobile. It appears logical to conclude from this that a pretextual search is not an inventory search. Ohio v. Robinson****, 58 Ohio St. 2d 478 (1979), (emphasis added).*

The trial court below found that the surrounding circumstances clearly demonstrated that the procedure involved herein was merely a pretext for what was in

actuality an evidentiary search. The trial court thus properly suppressed **all** evidence obtained during the search because the **entire** search was evidentiary in nature.

Petitioner, however, simply refuses to accept this factual determination and attempts to subvert the trial court finding by misinterpreting it in such a way as to suggest that the search herein began as an inventory search and later developed into an evidentiary search. Such an interpretation, however, is clearly in opposition to the opinions and judgments of the courts below. The trial court found the purpose of the search investigatory from the outset. The Ninth District Court of Appeals affirmed this holding and stated that "[t]he trial judge was the trier of fact, and we find the record contains sufficient evidence to support this finding." The Ohio Supreme Court likewise affirmed and specifically held that "[a] search which is conducted with an investigatory intent, and which is not conducted in the manner of an inventory search, does not constitute an "inventory search" and may not be used as a pretext to conduct a warrantless evidentiary search."

Thus, since the search herein was evidentiary from the outset, it was clearly impermissible under **South Dakota v. Opperman** as an unwarranted intrusion upon the Respondent's Fourth Amendment rights.

Further, since this was an evidentiary search, Petitioner's reliance on **Girardi v. Commonwealth**, 221 Va. 459, 270 S.E. 2d 743 (1980) and **United States v. Bosby**, 675 F. 2d 1174 (11th Cir. 1982) is clearly misplaced. **Girardi v. Commonwealth** concerned contraband that was discovered during the course of a legitimate inventory search. However, the case at hand does not involve a legitimate inventory search, and therefore the **Girardi** holding is inapplicable. The trial court herein did not, as Petitioner suggests, invalidate an inventory search retroactively by condemning police investigative conduct that occurred after the illegally possessed weapon was found. The trial court **did** find that the investigative conduct of the police permeated the search from the outset, and thus properly suppressed all evidence obtained therein.

United States v. Bosby is likewise inapplicable due to factual distinctions. However, even the **Bosby** court recognized that inventory searches must be limited to the effectuation of the recognized purposes for which they are conducted and they may not be used as a pretext for intrusive investigatory searches that would otherwise be impermissible. **Supra** at 1179. This is the same rationale applied herein by the courts below to find this to be an evidentiary search.

Therefore, since it has already been determined that the search herein was evidentiary from the outset, then the Question Presented by the Petitioner is clearly a non-issue in the case at hand. As such, since this case does not concern the scope of an inventory search, Respondent respectfully requests this Court to deny a Writ of Certiorari in the present case.

CONCLUSION

This case does not, as Petitioner suggests, present a novel issue of law concerning the scope of an inventory search once police find evidence of a crime during their inventory. It has clearly and consistently been established that the search involved herein was merely a pretext for an evidentiary search. Therefore, the evidence obtained therein was properly suppressed.

As such, since the Question Presented by Petitioner is a non-issue in the case at hand, Respondent respectfully requests this Court to deny a Writ of Certiorari in the present case.

Respectfully submitted,

GUY, MENTZER & TOWNE
Lawrence W. Vuillemin
Howard E. Mentzer
Attorneys for Respondent
2210 First National Tower
Akron, Ohio 44308
(216) 535-2151